

Christopher J. Reichman SBN 250485  
PRATO & REICHMAN, APC  
3737 Camino del Rio South, Suite 303  
San Diego, CA 92108  
Telephone: 619-683-7971  
Facsimile: 619-241-8309

Attorney for Plaintiff  
**JONATHAN SAPAN**

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

JONATHAN SAPAN,

Case No.: '14CV1112 JLS NLS

Plaintiff,  
vs.

**COMPLAINT FOR DAMAGES,  
INCLUDING PUNITIVE  
DAMAGES, INTEREST AND  
ATTORNEY'S FEES, AND  
FOR INJUNCTIVE RELIEF**

ADCHEMY, INC., a California  
Professional Corporation,  
MURTHY V. NUKALA, an individual,

### Defendants.

# **Violation(s) of Telephone Consumer Protection Act of 1991 Trespass to Chattel Unfair Business Practices**

COMES NOW Plaintiff JONATHAN SAPAN (hereinafter referred to as

“Plaintiff”) who alleges as follows:

111

11

1  
**JURISDICTIONAL ALLEGATIONS**

2       1. Plaintiff is, and at all times herein mentioned was, a resident of the  
3       County of San Diego, State of California  
4

5       2. Defendant Adchemy, Inc. is, and at all times herein mentioned was, a  
6       professional corporation, doing business in the County of San Diego, State of  
7       California.  
8

9       3. Defendant Murthy V. Nukala is, and at all times herein mentioned  
10      was, an individual resident of County of San Mateo, State of California.  
11

12      4. This case is filed pursuant to the Telephone Consumer Protection Act  
13      of 1991, 47 U.S.C. §227 et. seq. The U.S. Supreme Court recently decided that  
14      federal courts have federal question subject matter jurisdiction over such civil  
15      actions under 28 U.S.C. §§ 1331 and 1441. *Mims v. Arrow Fin. Services, LLC*, --  
16      U.S. --, 132 S.Ct. 740, 753 (2012). The state law claim herein arises out of a  
17      common nucleus of operative facts and is subject to supplemental jurisdiction  
18      pursuant to 28 U.S.C. § 1337.  
19

20      5. At all times herein mentioned each defendant was the partner, agent  
21      and employee of each co-defendant herein and was at all times acting within the  
22      scope of such partnership, agency and employment and each defendant ratified the  
23      conduct of each co-defendant herein.  
24

25      ///  
26  
27

1

## FACTUAL SUMMARY

2       6. JONATHAN SAPAN received calls to his home phone number from  
3 Defendants wherein they tried to pitch educational services on the following dates  
4 and times and using the following Caller ID (“CID”) numbers:

- 5
- 6           • October 6, 2011 at 9:16am, CID 877-506-6442
  - 7           • October 6, 2011 at 3:19pm, CID 877-502-6442
  - 8           • October 7, 2011 at 10:50am, CID 877-502-6442
  - 9           • October 24, 2011 at 8:42am, CID 855-826-3553
  - 10          • October 25, 2011 at 1:01pm, CID 855-826-3553
  - 11          • October 25, 2011 at 1:01 pm, CID 855-826-3553
  - 12          • October 26, 2011 at 8:42am, CID 855-826-3553
  - 13          • October 26, 2011 at 12:47pm, CID 877-284-3871
  - 14          • October 27, 2011 at 8:33am, CID 855-826-3553
  - 15          • October 27, 2011 at 9:20am, CID 855-826-3553
  - 16          • October 28, 2011 at 8:27am, CID 855-223-2332
  - 17          • October 28, 2011 at 12:42p, CID 855-223-2334
  - 18          • October 31, 2011 at 8:46am, CID 855-223-2330
  - 19          • October 31, 2011 at 4:47pm, CID 855-223-2331
  - 20          • November 1, 2011 at 4:03pm, CID 855-223-2334
  - 21          • November 1, 2011 at 4:41pm, CID 855-223-2334

22       7. While each of the calls complained of above used the Caller ID  
23 number, they did not transmit Caller ID name information as required by law.  
24  
25 47 C.F.R. § 64.1601(e).

26       8. On or about October 25, 2011, after receiving three calls in one day,  
27 Mr. Sapan called the 855-826-3553 number given in the Caller ID and spoke to  
28 “Derrick” or “Jerrick” of Adchemy, and requested to have his phone number put  
on their internal do-not-call list.

1       9.     Derrick or Jerrick refused to record the request in violation of TCPA  
2 regulations and told Mr. Sapan to send a request to *customercare@adchemy.com*.  
3

4       10.    Frustrated, Mr. Sapan called the number again, but it was not  
5 answered and went to voicemail.  
6

7       11.    On or about October 26, 2011, after receiving another two calls, Mr.  
8 Sapan called the other 877-284-3871 number given in the Caller ID.  
9

10      12.    The call was not answered, however, the voicemail message was  
11 identical to the voicemail message for 855-826-3553.  
12

13      13.    On the same day, Mr. Sapan again called 855-826-3553 and made a  
14 second request to have his phone number added to Adchemy's do-not-call list.  
15

16      14.    The person he spoke to told Mr. Sapan to visit the website  
17 [www.Search4Degrees.com](http://www.Search4Degrees.com). That website is registered to Adchemy according to the  
18 federal Internic Registry.  
19

20      15.    Twelve of the seventeen calls complained of were made after my first  
21 request to be put on Defendants' internal do-not-call list.  
22

23      16.    Mr. Sapan's home phone has been listed on the federal "Do Not Call"  
24 registry maintained by the Federal Trade Commission from August 9, 2008 to the  
25 present.  
26

27      17.    Defendant Murthy V. Nukala is, and at all times herein mentioned  
28 was, the owner of Defendant Adchemy, Inc.  
29

18. Plaintiff alleges on information and belief that Defendant Murthy V. Nukala made the violative calls, ordered them made, knew the calls described above were being made and did nothing, or was willfully and recklessly ignorant of the fact his company was making the calls described above.

## **FIRST CAUSE OF ACTION**

[Violation of Telephone Consumer Protection Act of 1991]

19. Plaintiff realleges all paragraphs above and incorporates them herein by reference.

20. Plaintiff is bringing this action pursuant to the provisions of the Telephone Consumer Protection Act of 1991 (47 U.S.C. §227 and 47 C.F.R. §64.1200 – “TCPA”).

21. Subdivision (c) (2) of Section 64.1200 of Title 47 of the Code of Federal Regulations makes it unlawful for any person to “initiate any telephone solicitation” to “A residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations”.

22. At all times relevant to this complaint, Plaintiff had registered his residential telephone number on the national do-not-call registry maintained by the U.S. Government.

1           23. Defendants have called Plaintiff's residential telephone line for  
2 solicitation purposes during the statutory period of the last 4 years, pursuant to 28  
3 U.S.C. § 1658. These calls are the only calls known to Plaintiff at this time and  
4 Plaintiff states on information and belief, without yet having the aid of full  
5 discovery, that it is quite likely that Defendant has made many more violative calls  
6 to Plaintiff's residential telephone line. These calls were not made in error, nor did  
7 Defendant have express permission from Plaintiff to call, nor did Defendant have a  
8 personal relationship with Plaintiff. 37 C.F.R. § 64.1200 (c) (i), (ii), & (iii).  
9

10          24. Subdivision (c)(5) of section 227 of title 47 of the United States Code  
11 permits a private right of action in state court for violations the national do-not-call  
12 registry rules promulgated thereunder. Plaintiff may obtain relief in the form of  
13 injunctive relief, or Plaintiff may recover \$500.00 for each violation, or both. If  
14 the court finds that defendants' violations were willful or knowing, it may, in its  
15 discretion, award up to three times that amount.  
16

17

18           **SECOND CAUSE OF ACTION**  
19           [Trespass to Chattel]

20

21          25. Plaintiff realleges all paragraphs above and incorporates them herein  
22 by reference.

23

24          26. The conduct by defendants complained of herein, namely illegally  
25 calling Plaintiff's phone, constitutes an electronic trespass to chattel.

1           27. At no time did Plaintiff consent to this trespass.

2           28. As a proximate result of these intrusions, Plaintiff suffered damage in  
3           an amount according to proof.  
4

5           29. In making the illegal calls described above, defendants were guilty of  
6           oppression and malice, in that defendants made said calls with the intent to vex,  
7           injure, or annoy Plaintiff or with a willful and conscious disregard of Plaintiff's  
8           rights. Plaintiff therefore seeks an award of punitive damages.  
9

10

11

12           **THIRD CAUSE OF ACTION**  
13           [Engaging in Unfair Business Practices]

14           30. Plaintiff realleges all paragraphs above and incorporates them herein  
15           by reference.

16           31. Because these telephone calls violate federal statutes, they are  
17           unlawful business practices within the meaning of section 17200 of the Business  
18           and Professions Code.  
19

20           32. Section 17203 of the Business and Professions Code entitles Plaintiff  
21           to an injunction enjoining defendants from engaging in unfair or unlawful business  
22           practices.  
23

24

25           WHEREFORE Plaintiff prays for judgment against defendants, and each of  
26           them, as follows:

27           / / /  
28

## On the FIRST CAUSE OF ACTION:

1. For an award of \$500.00 for each violation of 47 C.F.R. §64.1200 (c) (2);
  2. For an award of \$1,500.00 for each such violation found to have been willful;

## On the SECOND CAUSE OF ACTION:

3. For compensatory damages according to proof;
  4. For punitive damages;

## On the THIRD CAUSE OF ACTION:

5. For preliminary and permanent injunctions, enjoining Defendants, and each of them, from engaging in unfair or unlawful business practices pursuant to section 17203 of the Business and Professions Code;

## On ALL CAUSES OF ACTION:

6. For attorney's fees pursuant to California Code of Civil Procedure § 1021.5.
  7. For costs of suit herein incurred; and
  8. For such further relief as the Court deems proper.

DATED: May 1, 2014

## **PRATO & REICHMAN, APC**

/s/Christopher J. Reichman, Esq.  
By: Christopher J. Reichman, Esq.  
**Prato & Reichman, APC**  
Attorneys for Plaintiff  
**JONATHAN SAPAN**

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**  
**JONATHAN SAPAN**

(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
**PRATO & REICHMAN, APC**

3737 Camino del Rio South, Suite 303,  
 San Diego, CA 92108

Telephone: 619-683-7971

**DEFENDANTS**

**ADCHEMIX, Inc., a California Professional Corporation, MURTHY V. NUKALA, an individual,**

County of Residence of First Listed Defendant Santa Clara  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF  
 THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

**'14CV1112 JLS NLS**

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- |  |  |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question<br><i>(U.S. Government Not a Party)</i> |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity<br><i>(Indicate Citizenship of Parties in Item III)</i>   |

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTF	DEF	PTF	DEF
<input type="checkbox"/> 1	<input type="checkbox"/>	<input type="checkbox"/> 1	<input type="checkbox"/>	<input type="checkbox"/> 4
<input type="checkbox"/> 2	<input type="checkbox"/>	<input type="checkbox"/> 2	<input type="checkbox"/>	<input type="checkbox"/> 5
<input type="checkbox"/> 3	<input type="checkbox"/>	<input type="checkbox"/> 3	<input type="checkbox"/>	<input type="checkbox"/> 6
Citizen or Subject of a Foreign Country				
Foreign Nation				

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 422 Appeal 28 USC 158	<input checked="" type="checkbox"/> 375 False Claims Act
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability	<input type="checkbox"/> 428 Copyrights	<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 420 Deportation	<input type="checkbox"/> 420 Deportation
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 430 Commerce	<input type="checkbox"/> 430 Commerce
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 440 Racketeered Influenced and Corrupt Organizations	<input type="checkbox"/> 440 Racketeered Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 450 Consumer Credit	<input type="checkbox"/> 450 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 451 Tort Product Liability	<input type="checkbox"/> 460 Cable/Sat TV	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 452 Antitrust Monopolies	<input type="checkbox"/> 470 Securities/Commodities/ Exchange	<input type="checkbox"/> 470 Securities/Commodities/ Exchange
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 461 HIA (1395ff)	<input type="checkbox"/> 453 Environmental Matters	<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 454 Freedom of Information Act	<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 463 Alien Detainee	<input type="checkbox"/> 455 Other Statutory Actions	<input type="checkbox"/> 491 Agricultural Acts	<input type="checkbox"/> 491 Agricultural Acts
		<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 464 Mandamus & Other	<input type="checkbox"/> 493 Environmental Matters	<input type="checkbox"/> 493 Environmental Matters
		<input type="checkbox"/> 530 General	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 495 Freedom of Information Act	<input type="checkbox"/> 495 Freedom of Information Act
		<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 896 Arbitration	<input type="checkbox"/> 896 Arbitration
		<input type="checkbox"/> Other:	<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision	<input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
		<input type="checkbox"/> 540 Mandamus & Other		<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 950 Constitutionality of State Statutes
		<input type="checkbox"/> 550 Civil Rights			
		<input type="checkbox"/> 555 Prison Condition			
		<input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- |   |   |  |   |  |   |
|---|---|--|---|--|---|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from Another District (specify) | <input type="checkbox"/> 6 Multidistrict Litigation |
|---|---|--|---|--|---|

Cite the U.S. Civil Statute under which you are filing (*Do not cite jurisdictional statutes unless diversity*):  
**47 USC 227; 5-552**

Brief description of cause:  
**Illegal telemarketing calls to a residential phone number**

**VII. REQUESTED IN COMPLAINT:**  CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** *None* **CHECK YES only if demanded in complaint:** **JURY DEMAND:**  Yes  No

**VIII. RELATED CASE(S) IF ANY** *(See instructions):* **JUDGE** **DOCKET NUMBER**

DATE **SIGNATURE OF ATTORNEY OF RECORD**  
 05/01/2014 */s/ Christopher J. Reichman*

**FOR OFFICE USE ONLY**

RECEIPT # **AMOUNT** **APPLYING IFFP** **JUDGE** **MAG. JUDGE**